



# UNITED STATES PATENT AND TRADEMARK OFFICE

*m.H.*  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,792	05/25/2001	Jean-Pierre Giraud	5094.056	4413

25546 7590 05/09/2003

DREIER & BARITZ LLP  
499 PARK AVENUE  
20TH FLOOR  
NEW YORK, NY 10022

EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 05/09/2003

*13*

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/865,792

Applicant(s)

GIRAUD, JEAN-PIERRE

Examin r

Joseph C. Merek

Art Unit

3727

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9, 10, 12-15, 17, 29, 30, 32-35, 37, 40, 41, 43-46, 48, 53, 54, 56-59, 61 and 100-109 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/25/01 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other:  |

Continuation of Disposition of Claims: Claims pending in the application are 9,10,12-15,17,29,30,32-35,37,40,41,43-46,48,53,54,56-59,61 and 100-109.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "cap has a spout that projects from a side upwardly, the spout formed integrally with the cap and includes front and rear walls that converge to an outwardly protruding tip of the spout", "a valve located adjacent to or incorporated in to the spout wherein the valve substantially prevents a liquid from leaking out of the spout" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 10, 12, 13-15, 17, 29, 30, 32-35, 37, 41, 43-46, 48, 53, 54, 56, 57-59, 61, 100-109 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 9, 10, 12, 13, 14, 15, and 17, it is not clear what structure is required to meet the "cup insulation test method". Moreover, the claims do not set forth the parameters of the test. Regarding claim 12, it is not clear

Art Unit: 3727

what structure is required to meet the drop test method. Moreover, the claims do not set forth the parameters of the test. Regarding claims 100-104, it is not clear what is required by the term blowing agents. The term is not defined in the specification. The meets and bounds of the claim cannot be determined. The remaining claims are included since they stem from rejected claims.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 10, 12, 29, 30, 32, 40, 41, 43, 53, 54, 56, 100, 101, 102, 105, 106, and 107 are rejected under 35 U.S.C. 102(b) as being anticipated by Noll (US 3,661,288). Regarding claims 9, 10, and 12, see Figs. 1-4, the cap is 110 where 112 is the spout. The wall on one side of the spout is the front wall and the wall on the other side of the spout is the rear. The walls converge as seen in Fig. 2. The claims do not specify any shape for the spout and allow for the shape as presented in the reference. The term cup does not require any structure that is not in the reference. There exists a method of testing the cup such that the time will exceed 100 minutes. Moreover, there is no structure required by this limitation that is not in the reference. The cup is made from thermoplastic. The inner cup is receivable in the outer cup since as seen in the drawings it is inside the outer cup. Since the inner cup is inside the outer cup it satisfies

Art Unit: 3727

the limitation. Regarding claim 12, there exists a drop test method where the cup assembly will not crack. Regarding claims 29, 30, and 32, the valve is the spout or nipple and will substantially prevent a liquid from leaking out of the spout. It is inherent that the structure will have a small enough opening to substantially prevent a liquid from leaking out of the spout. Regarding claims 40, 41, and 43, see Fig. 1 where the volume is shown on the side of the container in ounces. Regarding claims 53, 54, and 56, see Col. 1, lines 20 and 21 where the plastic material of the cup can be polyethylene or polypropylene. Regarding claims 100-102, see Col. 1, lines 18 and 19, where the insulation material is Styrofoam. Regarding claim 105-107, see Col. 1, lines 15 and 16, where 106 and 108 are separated by an air space.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noll (US 3,661,288). Regarding claims 13 and 14, Noll discloses the claimed invention except for the thickness of the walls and the spacing between the inner and outer walls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the wall spacing or to vary the thickness of the walls, since it has been held that discovering an optimum value of a result effective variable

Art Unit: 3727

involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claims 9, 10, 12, 13, 14, 15, 17, 29-30, 32-35, 37, 40, 41, 43-46, and 105-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (US 2,895,636) in view of Bachman et al (US 5,890,621). Regarding claims 9, 10, and 12, Martin teaches the claimed invention but does not teach the spout on the cap. Bachman teaches a cap with a spout. It would have been obvious to modify the cap of Martin with the structure of Bachman et al to provide for a drinking cup for young children as taught by Bachman. The claims do not specify any shape for the spout and allow for the shape as presented in the reference. The term cup does not require any structure that is not in the reference. There exists a method of testing the cup such that the time will exceed 100 minutes. Moreover, there is no structure required by this limitation that is not in the reference. The cup is made from thermoplastic. The inner cup is receivable in the outer cup since as seen in the drawings it is inside the outer cup. Since the inner cup is inside the outer cup it satisfies the limitation. Regarding claim 12, there exists a drop test method where the cup assembly will not crack.

Regarding claims 13, 14, and 17, the modified structure of Martin discloses the claimed invention except for the thickness of the walls and the spacing between the inner and outer walls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the wall spacing or to vary the thickness of the walls, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA

Art Unit: 3727

1980). Regarding claims 15 and 17, see Figs. 2, 5, and 6, where a curve region at a bottom outside edge of the outer cup has a thickness greater than the wall thickness of the outer cup and a notch in a curve region at a bottom edge of the outer cup. The wall is thicker at the curved corner and the notch is in the curve region. Regarding claims 29, 30, 32-35, and 37, the modified cup of Martin has a valve located adjacent to or incorporated into the spout that substantially prevents a liquid from leaking out of the spout. This is seen in Fig. 3 of Bachman et al. Regarding claims 40, 41, 43-46, and 48 The modified container of Martin discloses the claimed invention except does not teach that the volume capacity for the inner cup is between 6-9 ounces. It would have been an obvious matter of design choice to vary the size of the cup, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Moreover, the claimed volume capacity range is common or typical of drinking cups. It would have been obvious to make the cup of a common size. Regarding claims 105-109, see Col. 2, lines 32-35, where the space between the shells 18 and 23 has air therein. This is called an insulating air space.

Claims 53, 54, 56-59, 61, and 100-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin in view of Bachman et al as applied to claims 40, 41, 43-46, and 48 above, and further in view of Kennedy et al. Regarding claims 53, 54, 56-59, and 61, the modified cup of Martin teaches making the container of polystyrene but does not teach the polyethylene or polypropylene. Kennedy et al, as seen in Col. 2, teaches a similar container where polypropylene and polyethylene can be used in place



Art Unit: 3727

of polystyrene. It would have been obvious to employ the plastics of Kennedy et al in the modified container of Martin to provide alternative plastic materials. Regarding claims, 100-104, the modified container of Martin teaches having an insulting air space but does not teach the claimed insulating materials. Kennedy et al, as seen in Figs. 2, 4, and 5 and Col. 2, lines 16-19, teaches that the space between the walls can be insulated. It would have been obvious to employ the insulation of Kennedy et al in the modified cup of Martin to provide for an alternative way to insulate the space. The insulation in the modified cup of Martin is foam.

### ***Conclusion***

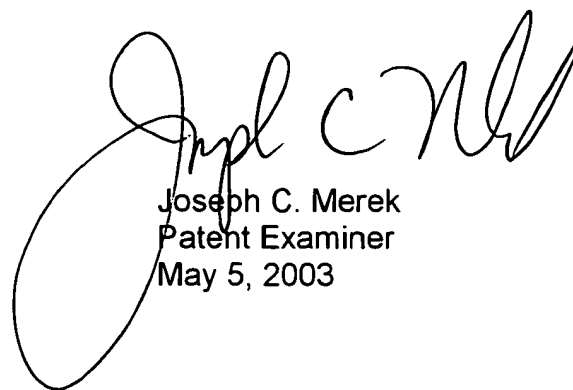
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Valenzona, Lewis, Crosson, Yamada et al '725, Yamada et al '262 are all cited for teaching double wall structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Art Unit: 3727

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

A handwritten signature in black ink, appearing to read "J. C. Merek", is written over the printed name and date.

Joseph C. Merek  
Patent Examiner  
May 5, 2003